

Regulations 1584

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1584

Index

1. *Form 400 and Proposed Regulation 1584*
2. *Statement of Explanation*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 10/29/10*
- B. *Approved Minutes, 11/16/10*
- C. *Reporters Transcript, 11/16/10*

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1584

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

OAL File No. 2010-1201-01 N

This Section 100 filing amends T18 CCR section 1584, *Membership Fees*, prescribing the application of sales and use tax to membership fees retailers charge to customers to shop at a membership club. The amendment applies the applicable five year California Consumer Price Index (CCPI) change to adjust the threshold level at which membership fees are included in taxable gross receipts of the retailer.


OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

RECEIVED

Date:

JAN 18 2011

Board Proceedings


Gordon R. Young
Senior Staff Counsel

**For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director**

**Original: Ramon Hirsig
Copy: Richard Bennion**

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk
DATE: 1/14/2011
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-1201-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-1201-01N regarding Membership Fees).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATION SUBMISSION

(See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

2010-1201-01N

EMERGENCY NUMBER

ENDORSED FILED
IN THE OFFICE OF

For use by Office of Administrative Law (OAL) only

2011 JAN 12 PM 3:14

2010-1201-01N
OFFICE OF
ADMINISTRATIVE LAWDiane Bowen
DEPUTY SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Membership Fees		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 1584	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

November 30, 2010

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 12 2011

Office of Administrative Law

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged).

(3) Incidental Sales. . . . (unchanged).

(4) Consumer Cooperatives. . . . (unchanged).

(b) Nominal Amount.

(1) For purposes of this regulation, beginning January 1, ~~2011~~²⁰⁰⁶, the term “nominal amount” means an amount totaling ~~\$55~~⁵⁰ or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2006 through December 31, 2010, the term “nominal amount” for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term “nominal amount” for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term “nominal amount” for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~²⁰¹¹ adjustment computation, the CCPI index on June 30, ~~2015~~²⁰¹⁰, will be compared with the CCPI index on June 30, ~~2010~~²⁰⁰⁵. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~²⁰¹⁵ with the CCPI index on June 30, ~~2010~~²⁰⁰⁵.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

Regulation 1584

Section 100

Index

1. *Form 400 and Proposed Regulation 1584*
2. *Statement of Explanation*

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-1201-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
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TITLE(S) 18		AMEND 1584	
		REPEAL	
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SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE November 30, 2010
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

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(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~²⁰¹¹ adjustment computation, the CCPI index on June 30, ~~2015~~²⁰¹⁰, will be compared with the CCPI index on June 30, ~~2010~~²⁰⁰⁵. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~²⁰¹⁵ with the CCPI index on June 30, ~~2010~~²⁰⁰⁵.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1584. *Membership Fees.*

A. Factual Basis

The State Board of Equalization (Board) originally adopted California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, in 1996 to prescribe the application of sales and use tax to membership fees retailers charge their customers to shop at membership club stores. As relevant here, Regulation 1584, subdivision (a)(1)(A) provides that “[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount.” And, Regulation 1584, subdivision (b) defines the term “nominal amount.”

When Regulation 1584 was first adopted in 1996, subdivision (b) defined the term “nominal amount” to mean “an amount totaling \$40 or less per year.” However, subdivision (b) also provided and continues to provide that “during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount.” Therefore, the Board subsequently amended the definition for the term “nominal amount,” pursuant to California Code of Regulations, title 1, section (Rule) 100, in 2000 and 2005 to provide that a nominal amount means an “amount totaling \$45 or less per year,” effective January 1, 2001, and a nominal amount means an “amount totaling \$50 or less per year,” effective January 1, 2006, respectively, due to increases in the CCPI.

During the most recent five-year period, the CCPI changed from 201.3 in June 2005 (the most recent computation year that resulted in an adjusted nominal amount) to 227.1 in June 2010 (the current computation year). The Board has determined that this change resulted in a 12.82 percent increase in the CCPI,¹ and that a 12.82 percent increase in the CCPI automatically results in a \$5 increase² in the current \$50 or less per year nominal amount, effective the following January 1, so that term nominal amount means an amount totaling “\$55 or less per year,” effective January 1, 2011. Therefore, the Board proposes to revise the first sentence in Regulation 1584, subdivision (b)(1) to provide that “beginning January 1, 2011, the term ‘nominal amount’ means an amount totaling \$55 or less per year, subject to increase as provided in subdivision (b)(2)” and add a new second sentence to subdivision (b)(1) to clarify that “For

¹ Note that 227.1 CCPI minus 201.3 CCPI equals 25.8 CCPI and 25.8 CCPI is 12.82 percent of 201.3 CCPI.

² Note that \$50 multiplied by 12.82 percent equals \$6.41, and that \$6.41 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

periods from January 1, 2006 through December 31, 2010, the term ‘nominal amount’ . . . means an amount totaling \$50 or less per year.” The Board also proposes to update the dates in the example set forth in the last two sentences in Regulation 1584, subdivision (b)(2), in order to provide guidance to the public and Board staff regarding the January 1, 2016, and January 1, 2021, nominal amount adjustment computations. The Board has determined that these changes are appropriate for processing under Rule 100 because they update the definition for the term “nominal amount” in Regulation 1584, subdivision (b)(1) in accordance with the regulation’s existing provisions and update the dates in the last two sentences of subdivision (b)(2) to make the example set forth therein applicable to the succeeding 2016 and 2021 nominal amount adjustment computations, and the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

B. Proposed Change to Regulation 1584

Proposed change to Regulation 1584:

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) In General. . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

(2) . . . (unchanged).

(3) Incidental Sales. . . . (unchanged).

(4) Consumer Cooperatives. . . . (unchanged).

(b) Nominal Amount.

(1) For purposes of this regulation, beginning January 1, ~~2011~~2006, the term “nominal amount” means an amount totaling ~~\$55~~50 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2006 through December 31, 2010, the term “nominal amount” for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term “nominal amount” for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term “nominal amount” for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5,

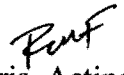
to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~~~2014~~ adjustment computation, the CCPI index on June 30, ~~2015~~~~2010~~, will be compared with the CCPI index on June 30, ~~2010~~~~2005~~. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~~~2015~~ with the CCPI index on June 30, ~~2010~~~~2005~~.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

Memorandum

To : Ms. Kristine Cazadd
Interim Executive Director, MIC: 73

Date: October 29, 2010

From :  Randy Ferris, Acting Chief Counsel
Legal Department, MIC:83

Subject : **Board Meeting, November 16-18, 2010**
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1584, Membership Fees

Sales and Use Tax Regulation 1584, *Membership Fees*, was originally adopted in 1996. Regulation 1584, subdivision (a)(1)(A) provides that "[m]embership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when . . . the retailer sells its products only to members and the membership fee exceeds a nominal amount." And, Regulation 1584, subdivision (b) defines the term "nominal amount."

When Regulation 1584 was first adopted, subdivision (b) defined the term "nominal amount" to mean "an amount totaling \$40 or less per year." However, subdivision (b) also provided that "during September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount." Therefore, the Board subsequently amended the definition for the term "nominal amount" in 2000 and 2005 to provide that a nominal amount means an "amount totaling \$45 or less," effective January 1, 2001, and a nominal amount means an "amount totaling \$50 or less," effective January 1, 2006, respectively, due to increases in the CCPI.

The CCPI changed from 201.3 in June 2005 to 227.1 in June 2010. Board staff has determined that this change resulted in a 12.82 percent increase in the CCPI,¹ and that, as a result of the increase of more than 5 percent, the definition for "nominal amount" in Regulation 1584 needs to be amended. Furthermore, Board staff has determined that a 12.82 percent increase in the CCPI requires a \$5 increase in the current "\$50 or less" nominal

¹ Note that 227.1 CCPI minus 201.3 CCPI equals 25.8 CCPI and 25.8 CCPI is 12.82 percent of 201.3 CCPI.

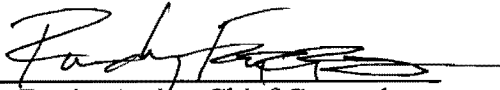
amount so that nominal amount means an "amount totaling \$55 or less per year," effective January 1, 2011.²

Therefore, we request your approval to place proposed revisions to Sales and Use Tax Regulation 1584 on the Chief Counsel's Rulemaking Calendar for the November 16-18, 2010, Board meeting in order to request the Board's authorization to amend the regulation under California Code of Regulations, title 1, section (Rule) 100, without the normal notice and public hearing process. The Rule 100 changes revise existing subdivision (b)(1) to include the new nominal amount of "\$55 or less," effective January 1, 2011, and clarify that the current nominal amount of "\$50 or less" is effective for the period January 1, 2006, through December 31, 2010. The Rule 100 changes also update the dates in the last two sentences in subdivision (b)(2) in order provide guidance to the public and Board staff regarding the January 1, 2016, and January 1, 2021 "nominal amount" adjustment computations. The changes are appropriate for processing under Rule 100 because they update the regulation in accordance with its existing provisions and do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

Attached is a strikeout and underlined version of the regulation illustrating the proposed revisions.

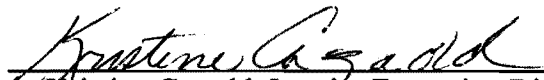
If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 916-323-3091.

Recommendation by:



Randy Ferris, Acting Chief Counsel

Approved:



Kristine Cazadd, Interim Executive Director

Approved:



Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 11-16-10 Board Meeting



Diane Olson, Chief
Board Proceedings Division

Attachments

² Note that \$50 multiplied by 12.82 percent equals \$6.41, and that \$6.41 must be rounded down to \$5 per the formula in Regulation 1584, subdivision (b).

cc: Mr. Jeffrey L. McGuire (MIC 43)
Ms. Diane Olson (MIC 80)
Ms. Christine Bisauta (MIC 82)
Mr. Bradley M. Heller (MIC 82)
Ms. Susanne Buehler (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Mr. Bradley Miller (MIC 50)

Regulation 1584. MEMBERSHIP FEES.

Reference: Sections 6011.1, 6012, and 6012.1 Revenue and Taxation Code.

(a) APPLICATION OF TAX

(1) IN GENERAL. Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,

or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) The membership fees described in subdivision (a)(1)(A) or (a)(1)(B) are part of the gross receipts of the person selling tangible personal property to a member. It is immaterial that the person who sold the membership is not the person who sells the tangible personal property to a member. Any sale of a membership described in subdivision (a)(1)(A) or (a)(1)(B) is regarded as related to the retail sale by the retailer selling tangible personal property to a member, not by the person selling the membership, measured by the amounts received by the person selling the membership.

(3) INCIDENTAL SALES. Charges for memberships not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(4) CONSUMER COOPERATIVES. Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

(b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, ~~2011~~²⁰⁰⁶, the term "nominal amount" means an amount totaling ~~\$55~~^{\$50} or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2006 through December 31, 2010, the term "nominal amount" for purposes of this regulation means an amount totaling \$50 or less per year. For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, ~~2016~~²⁰¹¹ adjustment computation, the CCPI index on June 30, ~~2015~~²⁰¹⁰, will be compared with the CCPI index on June 30, ~~2010~~²⁰⁰⁵. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, ~~2020~~²⁰¹⁵ with the CCPI index on June 30, ~~2010~~²⁰⁰⁵.

Regulation 1584
Nominal Amount Calculation

	A	B	C	D	E
	(1)	(2)	(3)	(4)	(5)
Year	CCPI Index	CCPI % Change	Current Threshold	Adjusted Threshold	Adjusted Threshold (rounded to nearest \$5)
1995	154.2			40.00	\$40.00
2000	174.0	12.840%	40.00	45.14	\$45.00
2005	201.3	15.690%	45.00	52.06	\$50.00
2010	227.1	12.817%	50.00	56.41	\$55.00
2015			55.00	55.00	
2020			0.00	0.00	
2025			0.00	0.00	
2030			0.00	0.00	
2035			0.00	0.00	
2040			0.00	0.00	
2045			0.00	0.00	
2050			0.00	0.00	
2055			0.00	0.00	
2060			0.00	0.00	
2065			0.00	0.00	
2070			0.00	0.00	

(1) The factor used is the California Consumer Price Index as determined by the FTB pursuant to RTC section 17041. The CCPI is available at the Department of Industrial Relations website at www.dir.ca.gov.

(2) $\frac{\text{Current Year (A)} - \text{Prior Year (A)}}{\text{Prior Year (A)}}$

(3) Prior Year (E)
The base nominal amount in 1995 was \$40.

(4) $((B+1) * C)$

(5) Adjusted Threshold (D) rounded to nearest \$5.

Notes

** In September every five years, beginning in 2000, the Sales and Use Tax Department Regulations Coordinator computes the nominal amount adjustment for Regulation 1584.

Tuesday, November 16, 2010

The Board met at its offices at 450 N Street, Sacramento, at 11:46 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS

RULEMAKING

Proposed Amendments to Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1584, *Membership Fees*, that would adjust the threshold for the nominal amount of membership fees to \$55 effective January 1, 2011, to reflect changes in the California Consumer Price Index (Exhibit 11.1).

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Regulation 1584, *Membership Fees*, as recommended by staff.

Mr. Horton directed staff to report back to him as to whether the pending changes to the definition of “nominal amount” in Regulation 1584, *Membership Fees*, will shift the burden of taxation, or increase or decrease the sales and use tax base.

Exhibits to these minutes are incorporated by reference.

Proposed Amendments to Regulation 1533.1, *Farm Equipment and Machinery*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding section 100 changes to Regulation 1533.1, *Farm Equipment and Machinery*, that would correct a cross-referencing error currently found in subdivision (b)(5) (Exhibit 11.2).

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Sales and Use Tax Regulation 1533.1, *Farm Equipment and Machinery*, as recommended by staff.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Property and Special Taxes Deputy Director's Report

David Gau, Deputy Director, Property and Special Taxes Department, made introductory remarks regarding the determination of the effect of Proposition 10 on cigarette and tobacco products consumption (Exhibit 11.3).

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

NOVEMBER 16, 2010

ITEM J1

PROPOSED AMENDMENTS TO REGULATION 1584

Reported by: Kathleen Skidgel

CSR No. 9039

P R E S E N T

For the Board
of Equalization:

Betty Yee
Chair

Jerome E. Horton
Vice-Chair

Barbara Alby
Acting Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane G. Olson,
Chief
Board Proceedings
Division

For Board of
Equalization Staff:

Bradley Heller
Staff Counsel

Jeff Lyle
Business Taxes Committee

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450 N STREET

SACRAMENTO, CALIFORNIA

NOVEMBER 16, 2010

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MS. YEE: Okay. We'll reconvene the meeting of the Board.

Our next item, Ms. Olson.

MS. OLSON: Our next item is J1, Rulemaking, Amendments to Regulation 1584, membership fees.

MS. YEE: Okay.

All right, Members, we're on item J1, Amendments to Regulation 1584, relating to membership fees. Let's have the staff introduce the issue.

Good morning, Mr. Heller.

MR. HELLER: Good morning, Madam Chair, Members of the Board. I'm here with -- well, I'm Bradley Heller from the Board's Legal Department. And I'm here with Jeff Lyle from the Board's Business Taxes Committee.

And we're here to request the Board's authorization to complete Rule 100 changes to Regulation 1584, membership fees, to change the definition for a nominal amount from an amount totaling \$50 or less per year to an amount totaling \$55 or less per year due to changes in the California consumer price index since 2005. And that change is per the instructions in the regulation and would be effective January 1, 2011.

MS. YEE: Okay. Very well. Thank you very much.

Questions, Members?

1 MR. HORTON: Madam Chair.

2 MS. YEE: Mr. Horton, please.

3 MR. HORTON: I'm going to just ask this, even
4 though I think I know the answer. Proposition 26, I
5 believe, as it relates to fees, does this have -- would
6 this have a overall financial impact at all?

7 MR. HELLER: Overall financial impact on -- on this
8 particular membership fees regulation you mean?

9 MR. HORTON: Right.

10 MR. HELLER: Not in this one. What we're actually
11 talking about here is, it's basically where there's certain
12 retailers that charge membership fees basically to some
13 customer/members who are able to shop at that retailer,
14 right.

15 And so the Board adopted this regulation to
16 basically specify when the membership fee is basically a
17 nominal amount and not really -- a nominal amount to be a
18 member of that retailer's -- I don't know -- I guess a
19 consumer who could just shop there as opposed to actually
20 buying anything. Whereas, when it's over a nominal amount,
21 then the Board recognized that as really being
22 consideration for discounts in purchased tangible personal
23 property.

24 So the regulation, when it says "membership fees",
25 it's really discussing the membership fees to shop at these
26 types of retailers, and the definition we're changing just
27 increases the threshold for nominal amounts so that the
28 retailers know what threshold they can charge membership

1 fees to without having to treat that as a charge for
2 tangible personal property subject to sales or use tax.

3 MR. HORTON: Yeah, I'm supportive of the measure.
4 Reducing the threshold, in effect, shifts, theoretically --
5 increases the number of individuals, on a number of
6 transactions, membership fee transactions that will not be
7 considered part of the measure.

8 MR. HELLER: That's correct.

9 MR. HORTON: And that has a financial consequences.
10 Just curious, as we go forward, if we're -- I don't
11 think we are. So it's -- I sort of hesitate to even ask
12 you to do this. It's kind of one of those things I think
13 we just do it until someone says otherwise.

14 But take a look at this for me, and let me know if
15 there is a financial impact. And in doing so, have we, in
16 effect, changed the burden of taxation, shifted the burden
17 of taxation in any way and thereby either increasing or
18 reducing the tax base, I would say.

19 MR. HELLER: Mr. Horton, would you like us to
20 report back for the December Board meeting?

21 MR. HORTON: Yes.

22 MR. HELLER: Thank you.

23 MR. HORTON: That'd be the will of the body, or you
24 can report back to me. But I think it would be interesting
25 discord for all of us.

26 MS. YEE: Okay. Ms. Mandel.

27 MS. MANDEL: No, I was just getting ready in case
28 we were done.

1 MS. YEE: Okay. Other comments, Members, on this
2 issue?

3 Okay. Hearing none, is there a motion?

4 MR. HORTON: So moved.

5 MS. MANDEL: Second.

6 MS. YEE: Okay. Motion by Mr. Horton, second by
7 Ms. Mandel to adopt the section 100 changes. Without
8 objection, motion carries.

9 And then with follow-up with Mr. Horton.

10 (The matter concluded at 11:51 a.m.)

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the
California State Board of Equalization certify that on
November 16, 2010 I recorded verbatim, in shorthand, to the
best of my ability, the proceedings in the above-entitled
hearing; that I transcribed the shorthand writing into
typewriting; and that the preceding pages 1 through 6
constitute a complete and accurate transcription of the
shorthand writing.

Dated: December 14, 2010

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter